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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

COBBLER NEVADA, LLC,

Plaintiff,

v.

DOE-24.21.136.125,

Defendant.

Case No.: 3:15-cv-00866-SB

PLAINTIFF'S MOTION TO PERMIT THE
DEPOSIT OF FUNDS FOR SUPERSEDEAS
BOND OR SURETY AND STAY
ENFORCEMENT OF JUDGMENT

(LR 67; FRCP 62(d))

UNOPPOSED

Conferral

The parties have conferred and this motion is *unopposed*. Defense counsel notes the subsequent motion to approve surety pursuant to FRCP 62(d) will likely be opposed.

**PLAINTIFF'S MOTION TO PERMIT THE DEPOSIT OF FUNDS FOR SUPERSEDEAS
BOND OR SURETY AND STAY ENFORCEMENT OF JUDGMENT**

I. MOTION

Plaintiff Cobbler Nevada, LLC moves the Court, pursuant to LR 67 for leave to deposit \$18,347.91 with the Court as a surety for an anticipated Federal Rule of Civil Procedure 62(d) motion to stay execution of the judgment on appeal.

II. BACKGROUND AND POINTS

Plaintiff-Appellant Cobbler Nevada, LLC (“Cobbler”) is the owner of the rights in the motion picture *The Cobbler*, a notable motion picture released nationally. Thomas Gonzales (“Gonzales”) was a defendant in an action alleging Gonzales either personally infringed Cobbler’s copyrights by downloading and distributing the motion picture *The Cobbler*, or is liable under a secondary liability theory for consistently and persistently facilitating the infringing activity of a third party after hundreds of warnings and notices. ECF 24; First Amended Complaint.

Gonzales filed a motion to dismiss pursuant to FRCP 12(b)(6) against the secondary liability claim. ECF 27. The District Court dismissed the secondary liability claim with prejudice and then *sua sponte* dismissed the direct liability claim without prejudice with leave to amend. ECF 39. Gonzales then petitioned for costs and fees claiming to be the prevailing party. ECF 47. The District Court found Gonzales to be the prevailing party and awarded Gonzales costs and fees. ECF 55.

Cobbler appealed the award of costs and fees together with the underlying Orders finding Gonzales a prevailing party and dismissing Cobbler’s claims. ECF 57.

Plaintiff Cobbler now moves for leave to permit the deposit of \$18,347.91, being 5% over the judgment (\$17,474.20 + \$873.71) to act as a surety in support of a motion pursuant to FRCP 62(d).

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WHEREFORE Plaintiff requests the Court or the Clerk enter an Order in accord with the proposed for submitted form to permit Plaintiff to deposit funds in support of an FRCP 62(d) Motion.

Respectfully submitted this day, November 16, 2017.

CROWELL LAW

/s/ Carl D. Crowell

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